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ART UNIT	**PAPER NUMBER**
3625	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/750,210	CYR ET AL.	
	Examiner	Art Unit	
	JASON B. DUNHAM	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 April 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,9-12 and 15-38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,9-12 and 15-38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 28, 2010 has been entered. Applicant amended claims 1-7, 9-12, 15, and 27 and canceled claims 13-14. Applicant's amendment to claim 9 overcomes the previous objection to the claim. Claims 1-7, 9-12, and 15-38 are pending.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Referring to claims 1-7 and 9-12. Claims to computer-related inventions that are clearly nonstatutory fall into the same general categories as nonstatutory claims in other arts, namely natural phenomena such as magnetism, and abstract ideas or laws of nature which constitute “descriptive material.” Abstract ideas, Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759, or the mere manipulation of abstract ideas, Schrader, 22 F.3d at 292-93, 30 USPQ2d at 1457-58, are not patentable. When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most

cases since use of technology permits the function of the descriptive material to be realized. Claims 1-7 and 9-12 fail to recite a computer program that is embodied on a statutory computer-readable medium as the storage media may be directed to non statutory carrier waves, signals, or software per se. The Examiner suggests amending the claim to recite a "non-transitory computer storage media" to overcome this rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 12 recite the limitation "the method further comprises". There is insufficient antecedent basis for this limitation in these claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-7, 9-12, and 15-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeBusk (US 5,682,728) hereafter know as DeBusk in view of DeBusk (US 2001/0016821) hereafter know as DeBusk 821.

Referring to claim 1. DeBusk discloses one or more computer storage media having computer executable instructions embodied thereon for automatically fulfilling orders for clinically related supplies, comprising:

automatically generating orders for clinically related supplies based upon supply consumption data derived from documentation of at least one clinical event, the supply consumption data including items used or consumed during the at least one clinical event, wherein the clinical event is carried out at a clinically related site having a plurality of clinical departments (DeBusk: column 5, lines 6-21 and column 6, lines 47-59). The examiner submits that DeBusk discloses generating orders based upon specific patient's needs in a clinical event such as surgery.

determining that a first subset of the clinically related supplies specified in the orders are suitable for aggregation because the clinically related supplies are non-time sensitive (DeBusk: column 3, lines 25 – 50 and column 5, line 50 – column 6, line 25 disclosing distributors delivering supplies to the appropriate area (such as the OR) in order to minimize cost and maintain proper inventory (e.g. non time-sensitive as opposed to a rush order for an impending procedure the next day);

determining that a second subset of the clinically related supplies specified in the orders are not suitable for aggregation because the clinically related supplies are time sensitive (column 6, lines 47 – 59 disclosing patient specific bundles to be delivered on short notice for a surgery in order to minimize the hospital's level of inventory);

without user intervention, accumulating a plurality of orders for the clinically related supplies in the first subset for delivery from a vendor before triggering delivery of

the clinically related supplies in the first subset from the vendor, wherein the plurality of orders are received from more than one of the plurality of clinical departments (DeBusk: column 3, lines 25 – 50 and column 5, line 50 – column 6, line 25 disclosing distributors delivering supplies to the appropriate area (such as the OR) in order to minimize cost and maintain proper inventory (e.g. non time-sensitive as opposed to a rush order for an impending procedure the next day); and

without user intervention, triggering delivery of the clinically related supplies in the second subset without aggregation (column 6, lines 47 – 59 disclosing patient specific bundles to be delivered on short notice for a surgery in order to minimize the hospital's level of inventory).

DeBusk discloses all of the above but does not explicitly teach generating an order based upon real time supply consumption data generated while a clinical event is carried out. DeBusk 821 discloses a system for automatically fulfilling orders for clinically related supplies including generating an order based upon real time supply consumption data generated while a clinical event is carried out (DeBusk 821: abstract, figure 10, and paragraph 120). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have modified the system of DeBusk to have included generating orders based on real time supply consumption data, as taught by DeBusk 821, in order to allow for tracking of resource consumption during a procedure for the purpose of inventory analysis (DeBusk 821: paragraph 128). This is merely a combination of known techniques to yield a predictable result. Such combination is rendered obvious under KSR. See KSR, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

Referring to claim 2. The combination of DeBusk and DeBusk 821 further discloses a media wherein the clinically related site comprises a hospital facility (DeBusk: column 1, lines 13-39).

Referring to claim 3. The combination of DeBusk and DeBusk 821 further discloses a media wherein the supply consumption data includes clinically available quantities of surgical devices (DeBusk: column 1, lines 36-48, column 2, lines 29-40, and column 6, lines 47 - 59).

Referring to claim 4. The combination of DeBusk and DeBusk 821 further discloses a media wherein the method comprises generating the at least one clinical supply order based upon at least one clinical quantity threshold (DeBusk: column 3, lines 25 – 50).

Referring to claim 5. The combination of DeBusk and DeBusk 821 further discloses a media wherein the at least one order for clinically related supplies comprises a purchase order (DeBusk: column 2, line 41 – column 3, line 24).

Referring to claims 6-7. The combination of DeBusk and DeBusk 821 further discloses a media wherein the supply consumption data includes supply codes captured in the clinically related site and are manually entered codes (DeBusk: column 3, lines 25-50).

Referring to claims 9 and 11. The combination of DeBusk and DeBusk 821 further discloses a media wherein the clinically related supplies in the first subset are determined to be suitable for aggregation because the clinically related supplies in the first subset are also categorized as non critical or as receiving a favorable purchase

price when ordered in a batch (DeBusk: figure 3 and column 5, lines 50 – 67 and column 6, lines 1 - 25 disclosing combing supplies together and timing delivery based on a given care event and historical records relating to frequency of occurrence of a given care event in order to minimize cost in the supply chain).

Referring to claim 10. The combination of DeBusk and DeBusk 821 further discloses a media wherein the at least one order for clinically related supplies is associated with an individual patient supply record (DeBusk: column 6, lines 47-59).

Referring to claim 12. The combination of DeBusk and DeBusk 821 further discloses a media wherein the method further comprises triggering delivery of the at least one order for clinically related supplies based upon at least one order for clinically related supplies and upon a set of rules, and where the set of rules comprising a set of selectors based upon patient condition information (DeBusk: column 4, lines 30-65).

Referring to claim 15. The combination of DeBusk and DeBusk 821 disclose all of the above including generating an order based on real time supply data and further discloses a method for automatically fulfilling orders for clinically related supplies, comprising:

tracking, at a computing device, a clinical supply inventory at a clinically related site (DeBusk: abstract);

generating a pick ticket including a selection of clinically related supplies for a clinical event (DeBusk: column 6, lines 47 - 59 disclosing a selection of supplies for a specific patient's treatment);

retrieving the clinically related supplies from storage (DeBusk: column 5, lines 22 - 50);

consuming the clinically related supplies during the clinical event and updating a patient supply record in real time to generate real time supply consumption data indicating the clinically related supplies that were consumed in the clinical event (DeBusk: 821: paragraph 120);

automatically generating at least one order for the clinically related supplies based on the real time supply consumption data derived from documentation of the clinical event generated while the clinical event is carried out, the supply consumption data including items used or consumed during the at least one clinical event at the clinically related site (DeBusk 821: abstract, figure 10, and paragraph 120);

determining that a favorable purchase price for at least one of the clinically related supplies may be derived by aggregating orders for the at least one of the clinically related supplies (DeBusk: column 3, lines 25 – 50 and column 5, line 50 – column 6, line 25 disclosing distributors delivering supplies in order to minimize cost and maintain proper inventory)

determining that the at least one of the clinically related supplies is non-time sensitive (DeBusk: column 6, lines 1-25 disclosing a hospital more controlling it's inventory for future usage (e.g. non time-sensitive as opposed to a rush order for an impending procedure the next day);

upon said determining that the favorable purchase price may be derived and the at least one of the clinically related supplies is non-time sensitive, without human

invention, accumulating additional orders for the at least one of the clinically related supplies prior to triggering delivery (DeBusk: column 3, lines 25 – 50 and column 5, line 50 – column 6, line 25 disclosing distributors delivering supplies in order to minimize cost and maintain proper inventory); and

triggering delivery of the at least one of the clinically related supplies after accumulating multiple orders for the at least one of the clinically related supplies (DeBusk: column 6, lines 26 – 46 disclosing pre-processing of orders by suppliers in order to have materials for multiple orders ready for delivery).

Referring to claims 16-21. Method claims 16-21 are rejected under the same rationale set forth above in the rejection of systems claims 2-7 containing similar limitations.

Referring to claim 22. The combination of DeBusk and DeBusk 821 further discloses a method, wherein the at least one order comprises a plurality of orders, further comprising a step of aggregating the orders for clinically related supplies for delivery from a single vendor (DeBusk: figure 2 disclosing multiple manufacturers supplying a single distributor).

Referring to claim 23. The combination of DeBusk and DeBusk 821 further discloses a method wherein the orders for clinically related supplies are accumulated for a plurality of clinical departments within the clinically related site (DeBusk: column 3, lines 25 – 50 and column 5, line 50 – column 6, line 25 disclosing distributors delivering supplies to the appropriate area)

Referring to claims 24-38. Method claims 24-38 are rejected under the same rationale set forth above in the rejection of systems claims 1-12 and method claims 15 and 22-23 containing similar limitations.

Response to Arguments

Applicant's arguments filed April 28, 2010 regarding the above 35 USC 103(a) rejection in view of the combination of DeBusk and DeBusk have been fully considered but they are not persuasive.

Applicant argues on page 14 of the remarks that the combination of DeBusk and DeBusk 821 does not disclose the accumulation of orders nor the generation of orders based on real time supply data. The examiner respectfully disagrees. Paragraph 40 of the PG Pub of applicant's disclosure teaches aggregating supplies that are non-time sensitive upon reaching a low reserve quantity or other triggering criteria. Similarly, column 6, lines 1 - 46 disclose monitoring inventory levels of a hospital and alerting manufacturers and distributors to have materials ready for multiple orders. Applicant indicates in their remarks that DeBusk '821 does disclose real time supply consumption data which is used to procure supplies for future use, however argues that this data is not used to generate an order. The examiner disagrees because generating an order for supplies is obvious in view of procuring supplies for future use. Furthermore, claim 1 recites basing the orders upon real time supply consumption data (as admitted to be disclosed by DeBusk '821), and then waiting to request delivery from a vendor until a plurality of orders have been accumulated which is not distinct from determining

supplies that will be required at some point in the future as disclosed by the combination DeBusk and DeBusk '821.

Applicant further argues that the prior art of record does not disclose determining supplies without human intervention. The examiner disagrees because DeBusk discloses generation of a bill of materials used to determine the supplies required for a bundle. The examiner agrees that DeBusk does require user intervention in recording the use of specific supplies during a patient procedure, however the plurality of orders are aggregated before delivery through the generation of the bill of materials (see at least column 5, line 51 – column 6, line 46. This is analogous to applicant's disclosure in figure 9 and paragraph 46 of the PG Pub requiring manual entry or data scan by a user of the supplies that were consumed during a procedure.

Dependent claims 2-7 and 9-12 remain rejected under the same rationale set forth above regarding the rejection of independent claim 1.

Applicant further argues that the combination of references fails to describe "upon said determining that the favorable purchase price may be derived and the at least one of the clinical related supplies is non-time sensitive, without human intervention, accumulating additional orders for the at least one of the clinical related supplies prior to triggering delivery" as recited in independent claim 15. The examiner respectfully disagrees for the reasons states above for maintaining the rejection of claim 1 containing similar limitations and also because DeBusk '821 discloses a hospital minimizing costs of supplies by aggregating supplies together prior to delivery to minimize shipping costs (e.g. a more favorable price).

Independent claim 27 and dependent claims 16 -26 and 28-38 remain rejected under the same rationale set forth above regarding the rejection of independent claims 1 and 15.

Conclusion

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON B. DUNHAM whose telephone number is (571)272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason B Dunham/
Primary Examiner, Art Unit 3625